

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105**

**RH04038904**

**October 11, 2005**

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING  
California Automobile Assigned Risk Plan's Proposed Changes to  
Commercial Forms and Endorsements**

**SUBJECT OF HEARING**

California Insurance Commissioner John Garamendi will hold a public hearing to consider the proposed amendments to the Commercial Forms/Endorsements for the California Automobile Assigned Risk Plan ("CAARP" or "Plan") Plan of Operations and invites comments from the public. The Insurance Services Office (ISO) has introduced revisions to the Commercial Auto Coverage Parts Program (CACP) and related endorsements to replace the July 1997 Edition. The CACP Forms are part of AIPSO's countrywide manual called the Portfolio. These forms are written to be applicable to all states. However when a state does not offer a type of coverage it is noted in that particular state's list of forms. For example the California Plan does not provide physical damage coverage so it is noted in the proposed amendments that this coverage has no effect on Plan business in California. The proposed amendments list all changes but CAARP proposes adopting only the revisions in the new CACP that are applicable to California.

**AUTHORITY TO ADOPT; PROCEDURES AND REFERENCE**

The Commissioner will consider the proposed changes pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Rules and forms are specified in the Plan of Operations and are approved by the Commissioner. California Insurance Code Section 11624 that sets standards for the determining eligibility of applicants for insurance and California Code of Regulations, Title 10, Chapter 5, Section 2498.4.9 that contains the information regarding the ability to order the Commercial Forms and Endorsements.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

**Date and Time:**        **November 17, 2005**  
                                 **10:00 a.m.**

**Location:**                **California Department of Insurance**  
                                 **45 Fremont Street**  
                                 **22<sup>nd</sup> Floor Hearing Room**  
                                 **San Francisco, California 94105**

**ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed revision prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance .ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

Elizabeth Mohr, Assistant Chief Counsel  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
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All persons are invited to present oral and/or written testimony at the scheduled public hearing.

**DEADLINE FOR WRITTEN COMMENTS**

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on November 17, 2005**. Any written materials received after that time will not be considered. Written

comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST

CAARP adopts the latest ISO CACP for use in the residual market. However, CAARP has not adopted certain ISO changes as they were not considered appropriate for residual market use.

The proposed changes listed below show all the changes to the forms. Where the changes do not affect California or where CAARP has recommended that they not be adopted they are noted.

### **I. COVERAGE FORMS**

#### **A. CA 00 01 10 01 Business Auto Coverage Form** Replaces CA 00 01 07 97

##### **1. Section III—Physical Damage Coverage**

***Note:** The California Plan does not provide physical damage coverage so these changes have no effect on Plan business.*

##### **a. Coverage Extensions**

- (1) The transportation expenses are increased from \$15 per day subject to a maximum of \$450 to \$20 per day subject to a maximum of \$600.

*CAARP is not recommending this broadening of coverage because it is not universally provided in the voluntary market.*

- (2) Added loss of use expenses for which an insured becomes legally liable when a rental car is damaged.

*CAARP did not recommend this broadening of coverage with the 7/97 Edition of the CACP. Therefore, CAARP does not recommend adopting it for use with this revised Edition of the CACP.*

- b. Exclusions

Introduction of a diminution in value exclusion to clarify that the Coverage Form does not provide for payment of any loss in market value as loss in market value is not a component of direct and accidental loss or damage as provided in the policy's definition of "loss".

- c. Limit of Insurance

The Limit of Insurance provision is revised to clarify that loss payment for repair or replacement does not include any payment for betterment, and that adjustments will be made for depreciation and physical condition in determining actual cash value in the event of a total loss.

## 2. Section IV—Business Auto Conditions

- a. Loss Conditions

The Loss Payment—Physical Damage Coverages provision is revised to clarify that sales tax for a damaged or stolen vehicle is considered part of the total loss settlement.

**Note:** *The California Plan does not provide physical damage coverage so these changes have no effect on Plan business.*

- b. General Conditions

- (1) The Premium Audit provision is revised to address the due date for audit premiums.

- (2) The Policy Period, Coverage Territory provision is revised to incorporate limited worldwide coverage provisions.

*The California Plan did not adopt this broadening of coverage with the 7/97 Edition of the CACP. Therefore, CAARP does not recommend adopting it for use with this revised Edition of the CACP (See AP 62 15).*

## 3. Section V—Definitions

- a. The definition of "Covered Pollution Cost or Expense" is broadened to include any cost or expense arising out of a statutory or regulatory requirement.
- b. A definition of "Diminution in Value" is added in conjunction with the diminution in value exclusion as mentioned above.
- c. The definition of "Insured Contract" is revised to be consistent with the definition in ISO's Commercial General Liability Policy.

- d. The definition of “Temporary Worker” is revised to be consistent with ISO’s Commercial General Liability Policy.

**B. CA 00 12 10 01 Truckers Coverage Form**  
Replaces CA 00 12 07 97

This form is revised to incorporate the same revisions made to the Business Auto Coverage Form outlined in paragraph A above.

## **II. CAARP ENDORSEMENTS**

**A. AP 21 03 03 04 California Changes—Common Policy Conditions**  
Replaces AP 21 03 04 00 and AP 30 15 08 99

This form is revised by incorporating the current provisions of form AP 30 15 into this form. The provisions of both forms are unchanged.

*Note: Although there are only a few substantive changes and only editorial and updated form numbers to the endorsements they have all been included for information purposes.*

**B. AP 62 15 10 02 Changes In Commercial Auto Coverage Form**  
Replaces AP 62 15 01 99

This form is revised for editorial revisions.

**C. AP 70 14 10 02 Changes In Truckers Coverage Form**  
Replaces AP 70 14 01 97

This form is revised for editorial purposes.

**D. AP 70 15 10 02 Changes In Truckers Endorsement**  
Replaces AP 70 15 01 97

This form is revised for editorial purposes.

**E. AP 90 46 01 03 Split Liability Limits**  
Replaces AP 90 46 12 93

This form is revised to add non-duplication of benefits language to track the policy. In addition, editorial revisions have been made.

## **III. ISO ENDORSEMENTS**

**A. CA 02 40 10 01 Suspension Of Insurance**  
Replaces CA 02 40 07 97

This form is revised editorially to add additional space to list covered autos.

**B. CA 20 01 10 01 Lessor—Additional Insured And Loss Payee**  
Replaces CA 20 01 02 99

The title of this form is revised from “Additional Insured—Lessor” to “Lessor—Additional Insured and Loss Payee” to more closely track with the purpose of the endorsement.

**C. CA 20 15 10 01 Mobile Equipment**  
Replaces CA 20 15 07 97

The schedule of this form is revised to delete the specified \$25 deductible for physical damage coverage for specified causes of loss to allow a deductible in the amount of the insured's selection. This revision tracks with the change made to the underlying Declarations pages.

***Note:** The California Plan does not provide physical damage coverage so these changes have no effect on Plan business.*

**D. CA 20 54 10 01 Employee Hired Autos**

Replaces CA 20 54 02 99

This form is revised editorially to

- add additional text to the lead-in for consistency with other forms.
- correct the paragraph reference from “5.d.” to “5.f.” for the Other Insurance—Primary and Excess Insurance Provisions of the Motor Carrier Coverage Form.
- change the word “contact” in paragraph B.2. to “contract”.

**E. CA 23 04 10 01 Rolling Stores**

Replaces CA 23 04 12 93

This form is revised to correct the spelling of the word “possession”.

**F. CA 23 17 09 00 Truckers—Uniform Intermodal Interchange Endorsement Form UIIE-1**

Replaces CA 23 17 07 97

This form is revised to

1. reflect the new requirements of the “Liability, Indemnity and Insurance” section of the Uniform Intermodal Interchange and Facilities Access Agreement.
2. delete the split limits option.
3. correct the zip code for the mailing address of the Intermodal Association of North America (IANA).

**G. CA 23 20 10 01 Truckers Endorsement**

Replaces CA 23 20 07 97

The schedule of this form is revised to delete the specified \$25 deductible for physical damage coverage for specified causes of loss to allow a deductible in the amount of the insured's selection. This revision tracks with the change made to the underlying Declarations pages. Editorial revisions have also been made.

***Note:** The California Plan does not provide physical damage coverage so these changes have no effect on Plan business.*

**H. CA 99 17 10 01 Individual Named Insured**

Replaces CA 99 17 07 97

This form is revised to replace the word “while” with “if” in response to the N.C. Court of Appeals decision in the case of Drye v. Nationwide Mutual Ins. Co., 126 N.C. App. 811, 487 S.E. 2d 148 (1997). The court found that the word “while”, as used in an endorsement to a Business Auto Policy reviewed by the court, was ambiguous when used in the sentence “While any “auto” you own of the private passenger type is a covered “auto” under Liability Coverage...”.

**I. CA 99 48 09 02 Pollution Liability—Broadened Coverage for Covered Autos—Business Auto, Motor Carrier and Truckers Coverage Form**

Replaces CA 99 48 12 93

This form is revised to

1. clarify that the Care, Custody and Control exclusion does not apply when the endorsement is attached to the policy.
2. include any cost or expense arising out of a statutory or regulatory requirement. This tracks the change made to the Coverage Forms.

**J. IL 00 21 07 02 Nuclear Energy Liability Exclusion Endorsement (Broad Form)**

Replaces IL 00 21 04 98

This form is editorially revised to delete reference to certain policies from the list of policies modified by the endorsement.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

COST OR SAVINGS TO AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

#### IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2).

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to allowing the proposed changes at the scheduled hearing or during the written comment period.

#### PLAIN ENGLISH

The changes describing CAARP's proposed changes are in plain English.

#### TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above.

#### FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons

will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site

#### ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed changes, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### AUTOMATIC MAILING

A copy of this Notice is being sent to all persons on the Insurance Commissioner's mailing list.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

#### AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

**JOHN GARAMENDI**  
Insurance Commissioner

Dated: \_\_\_\_\_, 2005

By: \_\_\_\_\_/s/\_\_\_\_\_  
Mike Riordan  
Staff Counsel